



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 19-03304  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

September 27, 2021

**Decision**

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns under Guidelines B (foreign influence) and E (personal conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On August 2, 2016, Applicant submitted a Questionnaire for National Security Positions (SF-86). On March 4, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline B. The SOR detailed reasons why the CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 21, 2020, Applicant submitted her SOR Answer, and requested a hearing. On January 20, 2021, Department Counsel issued an Amendment to the SOR adding an allegation under Guideline E. On March 22, 2021, Applicant submitted her Amended SOR Answer to the SOR Amendment.

On January 28, 2021, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On February 22, 2021, DOHA issued a notice scheduling the

hearing for March 25, 2021. Applicant confused the hearing date and did not appear as scheduled. On April 16, 2021, DOHA issued a notice of DCS video teleconference hearing rescheduling the hearing for May 19, 2021. On May 17, 2021, DOHA issued an amended notice of DCS video teleconference hearing rescheduling the hearing for May 20, 2021. I convened the hearing as rescheduled.

Department Counsel offered Government Exhibits (GE) 1 through 3, which I admitted without objection. Applicant testified and did not call any witnesses to testify on her behalf. I held the record open until June 17, 2021, to afford Applicant an opportunity to submit additional evidence. She timely submitted Applicant Exhibits (AE) A through L, which I admitted without objection. On August 20, 2021, DOHA received the hearing transcript (Tr.).

At Department Counsel's request and without objection, I take administrative notice of certain facts about Russia and Iran as contained in official U.S. Government documents (Hearing Exhibits (HE) I and II). Of particular note is the significant threat of crime, terrorism, kidnapping, armed conflict, civil unrest, and both countries limited capacity to provide support to U.S. citizens. Russia's history of espionage against the United States and Iran's history of terrorist-related activities against the United States, cannot be overlooked. There are also ongoing human rights problems in both countries. HE I and II discuss these concerns in greater detail.

### **Findings of Fact**

Applicant is 39-year-old vice president of a defense contractor company. She has been employed by her company since March 2016 and is required to hold security clearance to fulfill her responsibilities within her company. (Tr. 15-17; GE 1; AE F)

Applicant was born in Russia in 1982, and acquired Russian citizenship by birth. Her parents divorced when she was eight years old, and both of her parents remarried. Applicant immigrated to the United States in 1994 at age 12, with her mother, stepfather, and sister. (GE 1, GE 2; Tr. 21-22, 39-40, 50-51) She currently holds a U.S. passport issued to her in August 2013, and expires in August 2023. She has held a Russian passport since she was in the U.S. Air Force, discussed below. She attempted to renounce her Russian citizenship around 2008, but became frustrated with the costly and cumbersome requirements to do so. (Tr. 41-43; GE 1; AE A, AE I)

She attended middle school and high school in the United States, and received her high school diploma in 2000. She served in the U.S. Air Force from 2001 to 2004, and was separated with a general discharge under honorable conditions. Applicant became a naturalized U.S. citizen in 2001, shortly after enlisting in the Air Force. (Tr. 17-19, 22-25, 40; GE1, GE 2) One of her assignments in the Air Force was at Dover AFB working in the mortuary identifying the remains of 9/11 victims and service members killed in theater through dental records. Applicant was awarded an associate's degree in 2005, a bachelor's degree in 2007, and an MBA degree in 2011. (SOR Answer; GE 1; Tr. 17-18, 27-28)

Applicant's father is a resident citizen of Russia, and served as a career uniformed officer in the Russian Air Force, and was assigned to a Russian state-sponsored institute. After retiring from the Russian Air Force, he worked in that same institute as a civilian employee. He retired "several years ago" from that institute and no longer works. Applicant's stepmother is also a resident citizen of Russia. (GE 1; SOR; Tr. 30-32)

Applicant was granted and maintained a secret security clearance while in the Air Force from 2001 to 2004. In 2009, she was again granted a secret security clearance and maintained it until it was suspended in 2018 as a result of these proceedings. (GE 1, GE 2; Tr. 28-29) She was granted those clearances after disclosing her father and stepmother were resident citizens of Russia, her father's military and post-military assignment at a Russian institute, and of her marriage to her Iranian-born husband in 2014. Applicant has worked primarily in the defense industry post active duty Air Force, estimating her defense industry service to be "about 12" years to date. (Tr. 28-30, 42-43; GE 1; AE A)

Applicant met her third husband, an Iranian citizen in the United States, in 2011, and married him in 2014. She was previously married from 2001 to 2003, and from 2005 to 2007, to U.S.-born citizens. Both of those marriages ended by divorce. She has three U.S.-born children with her current husband, ages five, three, and one. (Tr. 20, 23, 25, 49-50; GE 1) Applicant's father-in-law and mother-in-law are resident citizens of Iran. (GE 1; SOR)

Applicant's father and stepmother have three-year tourist visas and travel to the United States "every few years or so" to visit Applicant, her sister, and their grandchildren. Applicant and her sister each have three children. (Tr. 30, 32-33) Applicant's mother and stepfather are naturalized U.S. citizens. Her stepfather worked as a DOD employee and held a secret security clearance. (SOR Answer) Applicant's sister is a naturalized U.S. citizen and her brother-in-law, nephew, and two nieces are U.S.-born citizens. Her sister is an active duty U.S. Air Force lieutenant colonel, her brother-in-law is a former U.S. Air Force engineer, and her nephew is an active duty U.S. Navy sailor. (SOR Answer) Applicant also has two uncles and six cousins, who are all U.S.-born citizens. (SOR Answer)

Applicant and her children frequently participate in a group chat and exchange photographs on social media with her father and stepmother in Russia. (Tr. 32-33) Applicant's father is 74 years old and has been diagnosed with prostate and stomach cancer as well as having a heart condition. He remains in Russia to receive medical care as a veteran. (AE A)

As noted, Applicant's father-in-law and mother-in-law are resident citizens of Iran. Before her father-in-law retired "five or seven years" ago, he "sold textiles and things like that." Her mother-in-law was a "stay-at-home mom" and raised four children. Applicant's in-laws were not employed by nor are they associated with the Iranian government. Applicant's in-laws own their own home and she has "no idea" what their net worth is. Her in-laws in Iran also participate in the same social media group chat as

her father and mother-in-law to exchange photographs and stay current with their grandchildren. (Tr. 33-37; AE A)

Applicant's mother-in-law is 69 years old, and was diagnosed with ovarian cancer approximately five years ago. Her father-in-law is 74 years old. Her in-laws in Iran are financially stable. (AE A) Applicant's husband has two sisters and one brother. All of those siblings are married, have children, live in the United States, and are employed in technical fields. The siblings of Applicant's husband all have "green cards" and intend to file for U.S. citizenship when eligible. They periodically visit their elderly parents in Iran to provide emotional and physical support. (SOR Answer; AE A)

As noted, Applicant's husband was born in in 1976 in Iran and as such is an Iranian citizen. He came to the United States in 1999 on a student visa and received a scholarship to attend a prestigious university. He went on to earn a bachelor of science degree in electrical engineering, a master's degree in electrical engineering, and completed his coursework for a Ph.D. in electrical engineering. Applicant's husband is a lawful permanent resident in the United States and is currently employed as director of engineering for a start-up company. (Tr. 36-37; AE A, AE J) Applicant's husband does not have any assets in Iran nor does he participate in any political process in Iran such as voting. (Tr. 39, 53-55)

In November 2020, Applicant's husband retained an immigration attorney to assist him with the process to become a U.S. citizen. In November 2020, his attorney filed his completed application for citizenship with all required application fees. Applicant's husband receives periodic updates from his immigration attorney regarding the status of his pending application. As of May 4, 2021, the immigration attorney's office advised Applicant's husband that "USCIS is processing applications filed on 12/20/2019 (sic) with an estimated processing time of 13.5 to 16.5 months. As your case was received on 11/16/2021, it is within normal processing times." (AE A, AE J, AE K, AE L)

The last concern centers on Applicant obtaining a Russian passport after obtaining a secret security clearance in 2009, and using that Russian passport to travel to Iran and Russia in 2013. (SOR ¶ 2.a) Applicant stated that she is a dual citizen by birth that she had a Russian passport going back to when she was in the Air Force, and that holding a Russian passport was the only way she could visit her father in Russia, who was very ill at the time. (Amended SOR Answer; Tr. 40-41; AE A)

Applicant further stated that her then boyfriend, now husband, arranged the trips to Iran and Russia in 2013 as a surprise to her so they could meet their respective parents before marrying in 2014. Applicant informed her facility security officer (FSO) at the time that she would be traveling, but did not know where. She did inform her FSO of where she had traveled on her return. A later FSO reported Applicant's use of a Russian passport to travel to Iran and Russia by Joint Personnel Adjudication System (JPAS) in 2016, some three years later, when Applicant disclosed such facts on her August 2, 2016 SF-86 when renewing her clearance. Applicant affirmatively stated that she had never attempted to hide anything regarding her travel or use of her Russian

passport. Any misstep regarding any passport or travel issues was due to her lack of knowledge of the process. (Amended SOR Answer; Tr. 44-46; GE 2 (July 26, 2018 Office of Personnel Management Personal Subject Interview (OPM PSI); AE A, AE F) After 2016, and becoming fully aware of travel requirements, she only used her U.S. passport to travel abroad. Applicant has reported all subsequent foreign travel to her FSO. (Tr. 48-50, 65; GE 2; AE A, AE I, AE J)

In 2016, Applicant turned her Russian passport in, now expired, to her FSO. However, in 2019, her FSO returned her passport to her “per SEAD” after the “US Government changed their rules and she was able to keep her Russian passport.” On June 3, 2021, Applicant returned her expired Russian passport to her FSO where it remains today. Applicant kept her Russian passport for the sole purpose of being able to visit her father. She explained that because she is not a permanent citizen in Russia, she does not have a “full” Russian passport that would allow her to work in Russia. Applicant related that as she understands the rules, she is allowed to hold her Russian passport, but cannot travel using her Russian passport. (Amended SOR Answer; Tr. 44-45; GE 2; AE A - AE G)

Applicant has no assets in Russia, nor does her husband have any assets in Iran. She and her husband own their home in the United States valued at approximately \$1.5 million. Her annual salary is “around \$175,000.” Her husband’s annual salary is “a little over \$200,000” and he has “stocks and bonuses that come in.” Their joint annual income is “usually around \$350,000 to \$400,000.” Applicant and her husband have checking and savings accounts in the United States and own four automobiles. (Tr. 51-52)

### **Character Evidence**

Applicant held several committee chair and subcommittee chair positions on two organizations that promote exchanges between DOD and her industry. She donates her clothes on an annual basis to a local woman’s shelter. For the most part, she spends her time between work and her family. (Tr. 60-61)

Post-hearing, Applicant submitted a reference letter from the president, chief executive officer, and owner of her company. The company president provided very favorable substantive comments about Applicant’s dedication and commitment to the mission of the company and the company’s mission to national security. The company president added that Applicant has made significant contributions establishing and growing their company capabilities through capture and awareness of new contracts, successful execution of their Government and commercial programs and in supporting the company’s growth, organizational structure and culture. The company president lauded Applicant’s loyalty to the United States, her work ethic, values her contributions in supporting U.S. national security, and fully supports reinstatement of Applicant’s security clearance. (AE H) The FSO also submitted a reference letter noting that Applicant demonstrates outstanding ethical behavior and noted her loyalty to the United States. (AE F)

## Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

The starting point for the analysis is the countries of Russia and Iran. The behavior of the Russian and Iranian governments presents a serious national security concern. The heightened-risk element is easily satisfied. Given Applicant's family ties to Russian and Iran, via her father, stepmother, spouse, and in-laws the Government has established its case under Guideline B. The above disqualifying conditions are raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position or having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States; and

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.

Russia and Iran's relationship with the United States, and the heightened risk it presents, place a very heavy burden on Applicant to mitigate the security concern. With that said, Applicant has multiple indicators of a mature, stable, responsible, and trustworthy person. She was serious, candid, and credible at the hearing. She appears to have cooperated fully and provided truthful information during the security clearance process and during her OPM interview. She made a good impression upon me during the hearing.

I have considered the totality of Applicant's ties to Russian via her father and stepmother, and of her ties to Iran via her spouse and mother-in-law and father-in-law. Applicant has a demonstrated record as a reliable clearance holder beginning with her Air Force service in 2001. Given her father and stepmother living in Russian and her in-laws living in Iran, and her contacts with them, Applicant understands and is sensitive to the nature of the security concern based on foreign influence. Although the family ties to Russia and Iran still count and cannot be dismissed out of hand, the strength of those ties are diminished given the facts and circumstances here. On balance, her ties to the United States are far stronger than the family ties to Russia and Iran.

Given the totality of the facts and circumstances, I conclude that it is unlikely Applicant will be placed in a position of having to choose between the interests of the United States and the interests of the Russian or Iranian governments or her family members who have Russian or Iranian citizenship. I further conclude there is no conflict of interest, because Applicant has developed such deep and long-standing relationships and loyalties in the United States that she can be expected to resolve any potential conflict of interest in the favor of the United States. AG ¶ 8(a) is partially applicable. AG ¶ 8(b) is applicable.



## Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, component medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or unreliable behavior . . . ; (2) any . . . inappropriate behavior; and (3) a pattern of dishonesty or rule violations.

This allegation was added as an Amendment to the SOR. A review of the evidence supports Applicant's assertion that she did renew her Russian passport as alleged. However, she noted that she was a dual citizen of Russia and reported her possession of a Russian passport on her SF-86s when she was in the Air Force as well as when she was a defense contractor. She was granted security clearances in 2001 and again in 2009. Applicant explained and corroborated the circumstances that led up to her surprise trip arranged by her then boyfriend to Russia and Iran in 2013. She also

rebutted the allegation that she did not inform her FSO and employer about her travel to Russia and Iran, or that her FSO did not become aware of her use of a Russian passport until 2016. With the benefit of hindsight, Applicant realizes that this situation could have been avoided. However, her explanation is credible and the facts as they eventually unfolded are without significant security significance and further discussion of mitigating conditions is not warranted. It is clear from Applicant's demeanor that this process has made a significant impression on her and failures to timely and accurately report information to her FSO are not likely to be repeated.

Following the Supreme Court's ruling in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I have weighted the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. Accordingly, I conclude that Applicant met her ultimate burden or persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR and Amended SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert Tuidor  
Administrative Judge